

§ 2200.210

exception of the 21 day period provided for in rule § 2200.90(b)(2).

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

§ 2200.210 Review of Judge's decision.

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision or order, the parties may pursue the case following the rules in subpart F.

§ 2200.211 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, 2200.73 and 2200.74 will not apply to E-Z Trials. All other rules contained in Subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing E-Z Trials.

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 29 U.S.C. 661(g); 5 U.S.C. 552.

SOURCE: 53 FR 17930, May 19, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2201 appear at 61 FR 14024, Mar. 29, 1996.

§ 2201.1 Purpose of scope.

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission under the Freedom of Information Act, 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed

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by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

§ 2201.2 Description of agency.

The Occupational Safety and Health Review Commission (OSHRC or Commission) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission.

§ 2201.3 Delegation of authority.

The Freedom of Information Act Officer is delegated the authority to act upon all requests for public records. In the absence of the Freedom of Information Act Officer, the Chairman or the Executive Director may designate another Commission officer or employee, such as the General Counsel or the Executive Secretary, to respond to requests. Copies of individual Commission decisions may be obtained directly from the Freedom of Information Act Officer at the Commission's national office. See § 2201.5(a). All other information requests shall be directed to the Freedom of Information Act Officer. See § 2201.6(b).

[61 FR 14025, Mar. 29, 1996]

§ 2201.4 General policy.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 553(b) or published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.6. Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Review Commission in any format, including electronic format. In searching for records, the Review Commission will look for records manually or by automated means. The Review Commission will search for records in their electronic form and in

hard copy form, in response to FOIA requests, except when such searching would significantly interfere with the operation of the Commission's automated information system.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the Freedom of Information Act Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Record availability.* The records of Review Commission activities are publicly available for inspection and copying at the OSHRC Information Office, 1120 20th St., NW, 9th Floor, Washington, DC. These records include:

(1) Final opinions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases.

(2) OSHRC Rules of Procedure and Guides to those procedures.

(3) Copies of records that have been released to a person under the Freedom of Information Act (FOIA) that, because of the subject matter, the Review Commission determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records.

(4) A general index of records released under the FOIA.

(d) Materials created on or after November 1, 1996 under paragraphs (c) (1), (2), (3) and (4) of this section may also be accessed through the Internet at the Review Commission's World Wide Web site at <http://www.oshrc.gov>.

[53 FR 17930, May 19, 1988, as amended at 65 FR 24130, Apr. 25, 2000]

§ 2201.5 Copies of Commission decisions.

(a) *Single decisions.* One copy of a Commission decision or decision by an Administrative Law Judge may be obtained free of copying fees by calling, writing or visiting the Freedom of In-

formation Act Officer at the Commission's national office. A search fee may be charged, however, if the decision is not identified by name and date, or by docket number, or if it is not otherwise easily identifiable. See § 2201.8 (b)(2)(i). Copying fees will be charged if more than one decision is requested and the copying cost exceeds \$10. See § 2201.8 (a)(1) and (b)(1). The address and telephone number of the office at which decisions are available is OSHRC, Freedom of Information Act Officer, One Lafayette Centre, 1120-20th St. NW., room 900, Washington, DC 20036-3419. Telephone 202-606-5398.

(b)(1) *OSAHRC Reports.* All final Commission decisions from 1971 through 1992 (including decisions of the Commission and its Administrative Law Judges) of general applicability, and concurring and dissenting opinions, are published in a series of microfiche entitled OSAHRC Reports. OSAHRC Reports may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Persons wishing to obtain copies of numerous decisions and avoid large copying charges may purchase OSAHRC Reports or subscribe to a private reporting service. Decisions issued after 1992 are available by calling, writing or visiting the national office.

(2) *Citation form.* Decisions in the microfiche series of OSAHRC Reports are officially cited as follows: The name of the cited employer; the last two digits of the year of the decision; OSAHRC (signifying the name of the official reporter, OSAHRC Reports); the serial number of the fiche on which the decision is printed, followed by a slash mark and the coordinates on the fiche for the first page of the decision. For example, *J.W. Black Lumber Co., 75 OSAHRC 1/B9*.

(3) *Indices.* The Commission indexes decisions in OSAHRC Reports by docket number and alphabetically by name. These indices may be purchased by contacting the Freedom of Information Act Officer.

[53 FR 17930, May 19, 1988, as amended at 58 FR 26066, Apr. 30, 1993; 61 FR 14025, Mar. 29, 1996]

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§ 2201.6 Procedure for requesting records.

(a) *Obtaining procedural rules, press releases, hearing dates, etc.* Press releases, rules of procedure, published material other than decisions and their indices, information concerning the date, time and place of hearings, and other information of a general nature concerning operations of the Commission may be obtained free of charge by calling, writing or visiting the Freedom of Information Act Officer. See the address and telephone number in § 2201.5(a).

(b) *Other information.* Persons wishing to obtain copies of documents (including the hearing transcript filed in a case before the Review Commission or a Judge, and information that is freely available under paragraph (a) of this section), shall submit a request in writing to the Freedom of Information Act Officer at the address in § 2201.5(a). The request shall be clearly identified as a request for information under the Freedom of Information Act. The envelope or cover enclosing or covering the request shall have the phrase “INFORMATION REQUEST” in capital letters on it. The agency will make information available in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.

(c) *Date of receipt.* A request that complies with the preceding paragraph is deemed received when received by the Commission. A request that does not comply with the preceding paragraph is deemed received when it is actually received by the Freedom of Information Act Officer. If the Freedom of Information Act Officer has required advance payment or satisfactory assurance of full payment under § 2201.8(f), the request will not be deemed received until the Freedom of Information Act Officer has received the payment or assurance.

(d) *Specificity required.* Requesters shall describe the records sought with reasonable specificity.

[53 FR 17930, May 19, 1988, as amended at 65 FR 24130, Apr. 25, 2000]

§ 2201.7 Responses to requests.

(a) *Responses within 20 working days.* The Review Commission Freedom of

Information Act Officer will either grant or deny a request for records within 20 working days after receiving the request.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Review Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic notice to the requester and will include an explanation of the reasons for the extension and will indicate the date on which a determination is expected to be made. “Unusual circumstances” exists, but only to the extent reasonably necessary to the proper processing of the particular request, when there is a need to:

(1) Search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Review Commission having substantial subject-matter interest therein.

(c) *Additional extension.* A requester shall be notified when it appears that a request cannot be completed within the allowable time (20 working days plus a 10 working day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) *Multitrack processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving “unusual circumstances”

that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless notified by the Review Commission, that their request is in the first track. The Review Commission will notify requesters when their request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. In the case of a request expected to take more than 30 working day for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Review Commission as a matter of agency discretion.

(3) The FOIA Officer will make the initial determination whether to grant

or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether its processing will be expedited.

(4) Administrative appeals of a denial of an expedited processing request will be handled with expeditious consideration.

(f) *Content of denial.* When the Freedom of Information Act Officer denies a request, the notice of the denial shall state the reason for it and that the denial may be appealed as specified in paragraph (g) of this section. A refusal by the Freedom of Information Act Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under paragraph (g) of this section. When release of entire records is denied in whole or in part, a reasonable effort will be made to estimate the volume of any requested matter that is denied, unless providing such an estimate would harm an interest protected by the exemption(s) under which the matter has been denied.

(g) *Appeal of denial.* A denial of a request may be appealed in writing to the Chairman of the Commission within 30 working days after the requester receives notice of the denial. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, he shall notify the requesting person that he may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)-(G).

(h) *Deletions.* The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

[53 FR 17930, May 19, 1988, as amended at 65 FR 24131, Apr. 25, 2000]

§ 2201.8 Fees for copying, searching, and review.

(a) *Discretion in charging fees*—(1) *Fees required unless waived.* The Freedom of Information Act Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than \$10, in which case no fees shall be charged. The Freedom of Information Act Officer shall, however, waive the fees in the circumstances stated in § 2201.9.

(2) *News media requests deemed not commercial.* Requests made for a commercial use are generally subject to higher fees than requests from a representative of the news media. For the purpose of this section, a request from a representative of the news media that supports the news dissemination function of the requester will not be considered to be for a commercial use.

(3) *Determination of commercial use request.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Where the Freedom of Information Act Officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Freedom of Information Act Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

(b) *Types of fees*—(1) *Copying fee.* The fee per copy of each page up to 8½"×14" shall be \$.25 per copy per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. One copy of a Commission or judge's decision will be provided free of charge. See § 2201.5(a).

(2) *Search fee.* The fee for searching for information and records shall be \$19 per hour of clerical time and \$46 per hour of professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. Commercial requesters

shall be charged for all search time. Time spent on unsuccessful searches shall be fully charged. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. The review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions, but shall not be charged for review by the Chairman under § 2201.7(c). The review fee is \$20 per hour.

(c) *Aggregation of requests.* When the Freedom of Information Act Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Freedom of Information Act Officer may aggregate any such requests and charge accordingly.

(d) *Certification or authentication.* The fee for certification or authentication shall be \$3 per document.

(e) *Fees likely to exceed \$25.* If copying or search charges are likely to exceed \$25, the Freedom of Information Act

Officer shall notify the requester of the estimated amount of the charges, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The notification shall offer the requester an opportunity to confer with the Freedom of Information Act Officer to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed \$250, the Freedom of Information Act Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the Freedom of Information Act Officer may request the requester to pay the full amount owed plus any interest owed as provided in paragraph (g) of this section or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the Freedom of Information Act Officer begins to process the new request or a pending request from that requester.

(g) *Interest on unpaid bills.* The Freedom of Information Act Officer shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. The accrual of interest will be stayed when the Freedom of Information Act Officer receives a check in payment. Interest will be at the rate described in 31 U.S.C. 3717 and will accrue from the date of billing.

(h) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Freedom of Information Act Officer may resort to the debt collection procedures set out in the Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies (see 26 U.S.C. 6103) and use of

collection agencies to encourage payment. See 31 U.S.C. 3718 and 3302.

[53 FR 17930, May 19, 1988, as amended at 61 FR 14025, Mar. 29, 1996]

§ 2201.9 Waiver of fees.

(a) *General.* The Freedom of Information Act Officer shall waive part or all of the fees assessed under § 2201.8(b) if two conditions are satisfied: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Act Officer shall afford the requester the opportunity to show that he comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the Freedom of Information Act Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

§ 2201.10 Maintenance of statistics.

(a) The Freedom of Information Act Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with

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the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year and the median number of days that these requests had been pending before the agency as of that date;

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The Freedom of Information Act Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the Commission Information Office and a copy will accessible through the Inter-

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net at OSHRC's World Wide Web site at <http://www.oshrc.gov>.

[65 FR 24131, Apr. 25, 2000]

PART 2202 [RESERVED]

PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

2203.1 Purpose and scope.

2203.2 Definitions.

2203.3 Public attendance at Commission meetings.

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2203.6 Certification by the General Counsel.

2203.7 Transcripts, recordings and minutes of closed meetings.

AUTHORITY: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

SOURCE: 50 FR 51679, Dec. 19, 1985, unless otherwise noted.

§ 2203.1 Purpose and scope.

This part applies to all meetings of the Occupational Safety and Health Review Commission. Its purpose is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open to public observation, to the extent practicable, the meetings of the Commission, while preserving the Commission's ability to fulfill its adjudicatory responsibilities and protecting the rights of individuals.

§ 2203.2 Definitions.

For the purposes of this part:

Expedited closing procedure means the simplified procedures described at 5 U.S.C. 552b(d)(4) for announcing and closing certain agency meetings.

General Counsel means the General Counsel of the Commission, the Deputy General Counsel, or any other person designated by the General Counsel to carry out his responsibilities under this part.

Meeting means the deliberations of at least two Commissioners, where such deliberations determine or result in the joint conduct or disposition of "official Commission business." A conference